

House Study Bill 184 - Introduced

HOUSE FILE _____

BY (PROPOSED COMMITTEE ON
GOVERNMENT OVERSIGHT BILL
BY CHAIRPERSON KAUFMANN)

A BILL FOR

1 An Act relating to eminent domain and condemnation, including
2 the authority of acquiring agencies to use eminent domain,
3 the procedures required for the use of eminent domain, and
4 compensation paid to certain property owners and including
5 effective date and applicability provisions.
6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

MERCHANT LINES

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3 Section 1. Section 6A.21, subsection 1, Code 2017, is
4 amended by adding the following new paragraph:

5 NEW PARAGRAPH. *Ob.* "*Merchant line*" means the same as
6 defined in section 478.6A, subsection 1.

7 Sec. 2. Section 6A.21, subsection 1, paragraph b, Code 2017,
8 is amended to read as follows:

9 *b.* "*Private development purposes*" means the construction of,
10 or improvement related to, recreational trails, recreational
11 development paid for primarily with private funds, merchant
12 lines, housing and residential development, or commercial or
13 industrial enterprise development.

14 Sec. 3. Section 6A.21, subsection 2, Code 2017, is amended
15 to read as follows:

16 2. The limitation on the definition of public use,
17 public purpose, or public improvement does not apply to the
18 establishment, relocation, or improvement of a road pursuant
19 to [chapter 306](#), or to the establishment of a railway under the
20 supervision of the department of transportation as provided in
21 section 327C.2, or to an airport as defined in [section 328.1](#),
22 or to land acquired in order to replace or mitigate land used
23 in a road project when federal law requires replacement or
24 mitigation. This limitation also does not apply to utilities,
25 persons, companies, or corporations under the jurisdiction of
26 the Iowa utilities board in the department of commerce or to
27 any other utility conferred the right by statute to condemn
28 private property or to otherwise exercise the power of eminent
29 domain, except to the extent such purpose includes construction
30 of merchant lines.

31 Sec. 4. Section 6A.22, subsection 2, paragraph a,
32 subparagraph (2), Code 2017, is amended to read as follows:

33 (2) The acquisition of any interest in property necessary to
34 the function of a public or private utility to the extent such
35 purpose does not include construction of merchant lines, common

1 carrier, or airport or airport system.

2 Sec. 5. EFFECTIVE UPON ENACTMENT. This division of this
3 Act, being deemed of immediate importance, takes effect upon
4 enactment.

5 Sec. 6. APPLICABILITY. This division of this Act applies to
6 projects or condemnation proceedings commenced on or after the
7 effective date of this division of this Act.

8 DIVISION II

9 LAKE DEVELOPMENT OR CREATION

10 Sec. 7. Section 6A.22, subsection 2, paragraph c,
11 subparagraph (1), subparagraph divisions (b) and (c), Code
12 2017, are amended to read as follows:

13 (b) For condemnation of property located in a county with
14 a population of greater than nine thousand two hundred fifty
15 but less than nine thousand three hundred, according to the
16 2010 federal decennial census, prior to making a determination
17 that development or creation of a lake as a surface drinking
18 water source is reasonable and necessary, the acquiring
19 agency shall conduct a review of feasible alternatives to
20 development or creation of a lake as a surface drinking water
21 source. An acquiring agency shall not have the authority
22 to condemn private property for the development or creation
23 of a lake as a surface drinking water source if one or more
24 feasible alternatives to provision of a drinking water source
25 exist. An alternative that results in the physical expansion
26 of an existing drinking water source is presumed to be a
27 feasible alternative to development or creation of a lake as a
28 surface drinking water source. An alternative that supplies
29 drinking water by pipeline or other method of transportation or
30 transmission from an existing source located within or outside
31 this state at a reasonable cost is a feasible alternative
32 to development or creation of a lake as a surface drinking
33 water source. If private property is to be condemned for
34 development or creation of a lake, only that number of acres
35 justified as necessary for a surface drinking water source,

1 and not otherwise acquired, may be condemned. Upon receipt
2 by the acquiring agency of a petition signed by not less
3 than twenty-five percent of the affected property owners,
4 the acquiring agency shall retain a certified hydrologist to
5 conduct a review and analysis of the proposed development
6 or creation of a lake. The certified hydrologist shall be
7 selected by a majority of a committee comprised of all affected
8 property owners and a representative of the acquiring agency.
9 The acquiring agency shall be responsible for paying the fees
10 and expenses of the certified hydrologist. For purposes of
11 this subparagraph (1), "certified hydrologist" means a person
12 certified by the American institute of hydrology. Development
13 or creation of a lake as a surface drinking water source
14 includes all of the following:

15 (i) Construction of the dam, including sites for suitable
16 borrow material and the auxiliary spillway.

17 (ii) The water supply pool.

18 (iii) The sediment pool.

19 (iv) The flood control pool.

20 (v) The floodwater retarding pool.

21 (vi) The surrounding area upstream of the dam no higher in
22 elevation than the top of the dam's elevation.

23 (vii) The appropriate setback distance required by state or
24 federal laws and regulations to protect drinking water supply.

25 (0c) An acquiring agency shall not have the authority to
26 condemn private property for the development or creation of
27 a lake as a surface drinking water source unless the United
28 States army corps of engineers has performed an engineering
29 review of the project and approved all required permits and
30 authorizations for completion of the project.

31 (c) (i) For purposes of this subparagraph (1), *"number of*
32 *acres justified as necessary for a surface drinking water source"*
33 means according to guidelines of the United States natural
34 resource conservation service and according to analyses of
35 surface drinking water capacity needs conducted by one or more

1 ~~registered~~ licensed professional engineers.

2 (ii) For condemnation proceedings for which the application
3 pursuant to [section 6B.3](#) was filed after January 1, 2013, for
4 condemnation of property located in a county with a population
5 of greater than nine thousand two hundred fifty but less than
6 nine thousand three hundred, according to the 2010 federal
7 decennial census, which property sought to be condemned was in
8 whole or in part described in a petition filed under section
9 6A.24, subsection 2, after January 1, 2013, but before January
10 1, 2014, regardless of whether the petitioner was determined by
11 a court to not be a proper acquiring agency, *"number of acres*
12 *justified as necessary for a surface drinking water source"*,
13 as determined under subparagraph subdivision (i) shall not
14 exceed the number of acres that would be necessary to provide
15 the amount of drinking water to meet the needs of a population
16 equal to the population of the county where the lake is to be
17 developed or created, according to the most recent federal
18 decennial census.

19 (iii) Upon receipt by the acquiring agency of a petition
20 signed by not less than twenty-five percent of the affected
21 property owners, the acquiring agency shall retain a
22 licensed professional engineer to conduct an additional
23 independent review and analysis of the determinations made
24 under subparagraph subdivisions (i) and (ii). The licensed
25 professional engineer shall be selected by a majority of a
26 committee comprised of all affected property owners and a
27 representative of the acquiring agency. The acquiring agency
28 shall be responsible for paying the fees and expenses of the
29 licensed professional engineer.

30 Sec. 8. EFFECTIVE UPON ENACTMENT. This division of this
31 Act, being deemed of immediate importance, takes effect upon
32 enactment.

33 Sec. 9. APPLICABILITY. This division of this Act applies to
34 projects or condemnation proceedings pending or commenced on or
35 after the effective date of this division of this Act.

DIVISION III

PIPELINES

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3 Sec. 10. NEW SECTION. **479B.9A Additional requirements —**
4 **eminent domain.**

5 In addition to any other requirements for the granting
6 of a petition pursuant to this chapter, an application for
7 a permit to construct a pipeline involving the taking of
8 property under eminent domain shall not be granted until
9 the applicant has obtained through voluntary easements a
10 minimum of seventy-five percent of the land area needed for
11 the construction, operation, and maintenance of the pipeline
12 and stations or equipment for the proper operation of the
13 pipeline. If seventy-five percent of the land area needed has
14 not been obtained through voluntary easements within two years
15 following the date the application is filed with the board, the
16 board shall reject the application and make a record of the
17 rejection.

18 Sec. 11. EFFECTIVE UPON ENACTMENT. This division of this
19 Act, being deemed of immediate importance, takes effect upon
20 enactment.

21 Sec. 12. APPLICABILITY. This division of this Act applies
22 to applications for permits filed but not yet acted upon on the
23 effective date of this division of this Act and to applications
24 for permits filed on or after the effective date of this
25 division of this Act.

26 DIVISION IV

27 RELOCATION OF BUSINESSES AND FARM OPERATIONS

28 Sec. 13. Section 6B.26, subsection 1, Code 2017, is amended
29 to read as follows:

30 1. A landowner shall not be dispossessed under condemnation
31 proceedings of the landowner's residence, dwelling house,
32 outbuildings if the residence or dwelling house is also
33 acquired, business, farm operation, orchard, or garden,
34 until the damages thereto have been finally determined and
35 paid. However, if the property described in [this subsection](#)

1 is condemned for highway purposes by the state department of
2 transportation, the condemning authority may take possession
3 of the property either after the damages have been finally
4 determined and paid or one hundred eighty days after the
5 compensation commission has determined and filed its award, in
6 which event all of the appraisement of damages shall be paid
7 to the property owner before the dispossession can take place.
8 This subsection shall not apply to condemnation proceedings
9 for drainage or levee improvements, or for public school
10 purposes. For the purposes of **this subsection**, "outbuildings"
11 means structures and improvements located in proximity to the
12 landowner's residence.

13 **Sec. 14. NEW SECTION. 316.6A Replacement property payment**
14 **to certain businesses and farm operations.**

15 1. In addition to payments otherwise authorized by this
16 chapter, the displacing agency shall make a payment to a
17 displaced person who is displaced from the person's place of
18 business or farm operation if the displaced person owned the
19 real property on which the business was conducted or where the
20 farm operation was located for at least one year prior to the
21 date of initiation of negotiations for the acquisition of the
22 real property and if the displaced person purchases comparable
23 replacement real property to conduct the displaced person's
24 business or farm operation within eighteen months following the
25 date the displaced person vacates the real property or receives
26 payment from the displacing agency under another provision of
27 this chapter, whichever is later. The additional payment shall
28 include the following amounts:

29 a. An amount that when added to the acquisition cost of
30 the real property acquired by the displacing agency, excluding
31 any dwelling on the property, equals the reasonable cost of
32 comparable real property for the displaced person's business or
33 farm operation, as determined by the displacing agency.

34 b. An amount that compensates the displaced person for
35 any increased interest costs and other debt service costs

1 that the displaced person is required to pay for financing
2 the acquisition of comparable replacement real property. The
3 amount shall be paid only if the real property acquired by
4 the displacing agency was encumbered by a bona fide mortgage
5 or land contract creating a valid lien on the real property,
6 excluding the dwelling, or on the dwelling, for not less than
7 one year immediately prior to the initiation of negotiations
8 for the acquisition of the real property.

9 *c.* The amount of actual, reasonable, and necessary expenses
10 incurred by the displaced person for evidence of title,
11 recording fees, and other costs incident to the purchase of
12 comparable replacement real property, but not including prepaid
13 expenses.

14 2. In addition to payments otherwise authorized by this
15 chapter, the displacing agency shall make a payment to a
16 displaced person or a person who is displaced from the person's
17 place of business or farm operation as an indirect result of
18 the acquisition of real property by the displacing agency
19 if the person in whole or in part owns the business or farm
20 operation, the person leased the real property upon which the
21 business was conducted or where the farm operation was located
22 for at least one year prior to the date of initiation of
23 negotiations for the acquisition of the real property, and the
24 person leases or purchases comparable replacement real property
25 to conduct the displaced person's business or farm operation
26 within eighteen months of the date the person vacates the
27 real property or receives payment from the displacing agency
28 under another provision of this chapter, whichever is later.
29 The displacing agency shall determine whether a displacement
30 described in this subsection has occurred. The additional
31 payment shall include the following amounts:

32 *a.* If the person leases comparable real property, the
33 difference between the average monthly amount of the lease of
34 the comparable real property and the average monthly amount
35 of the lease for the real property acquired by the displacing

1 agency, multiplied by forty-two.

2 *b.* If the person purchases comparable real property to
3 conduct the person's business or operate the person's farm, an
4 amount calculated consistent with the provisions of subsection
5 1, paragraphs "a" and "c".

6 3. All determinations to carry out this section shall be
7 made in accordance with administrative rules adopted by the
8 department.

9 Sec. 15. EFFECTIVE UPON ENACTMENT. This division of this
10 Act, being deemed of immediate importance, takes effect upon
11 enactment.

12 Sec. 16. APPLICABILITY. This division of this Act applies
13 to programs or projects or condemnation proceedings pending or
14 commenced on or after the effective date of this division of
15 this Act.

16 DIVISION V

17 FEASIBLE ALTERNATIVES

18 Sec. 17. Section 6A.22, subsection 2, paragraph b, Code
19 2017, is amended to read as follows:

20 *b.* (1) Except as specifically included in the definition
21 in paragraph "a", "*public use*" or "*public purpose*" or "*public*
22 *improvement*" does not mean economic development activities
23 resulting in increased tax revenues, increased employment
24 opportunities, privately owned or privately funded housing and
25 residential development, privately owned or privately funded
26 commercial or industrial development, or the lease of publicly
27 owned property to a private party.

28 (2) "*Public use*", "*public purpose*", or "*public improvement*"
29 does not include any use, purpose, or improvement included
30 in paragraph "a" if, in lieu of condemning property, a
31 feasible alternative location for the use, purpose, or
32 improvement exists and the owners of the property comprising
33 the alternative location have offered such property for sale
34 to the acquiring agency at the property's fair market value or
35 have consented to condemnation of the property.

1 Sec. 18. EFFECTIVE UPON ENACTMENT. This division of this
2 Act, being deemed of immediate importance, takes effect upon
3 enactment.

4 Sec. 19. APPLICABILITY. This division of this Act applies
5 to projects or condemnation proceedings pending or commenced on
6 or after the effective date of this division of this Act.

7 EXPLANATION

8 The inclusion of this explanation does not constitute agreement with
9 the explanation's substance by the members of the general assembly.

10 This bill relates to the authority of acquiring agencies to
11 use eminent domain and the procedures and compensation required
12 for the use of eminent domain.

13 Division I of the bill establishes a definition of "merchant
14 line" for purposes of Code chapters 6A and 6B that is the
15 same as defined in Code section 478.6A(1). The bill also
16 adds merchant lines to the definition of "private development
17 purposes". Code section 6A.21 provides that the authority
18 to condemn property for a public use, public purpose, or
19 public improvement does not include the authority to condemn
20 agricultural land for private development purposes unless the
21 owner of the agricultural land consents to the condemnation.
22 The bill also specifies under Code section 6A.21(2) that the
23 limitation on the definition of public use, public purpose,
24 or public improvement does apply to companies under the
25 jurisdiction of the Iowa utilities board or to any other
26 utility conferred the right by statute to condemn private
27 property to the extent such purpose includes construction of
28 merchant lines.

29 Division I of the bill takes effect upon enactment and
30 applies to projects or condemnation proceedings pending or
31 commenced on or after the effective date of division I of the
32 bill.

33 Division II of the bill provides that for condemnation
34 of property located in a county with a population of greater
35 than 9,250 but less than 9,300, according to the 2010 federal

1 decennial census, an acquiring agency shall not have the
2 authority to condemn private property for the development or
3 creation of a lake as a surface drinking water source unless
4 the United States army corps of engineers has performed an
5 engineering review of the project and approved all required
6 permits and authorizations for completion of the project. The
7 bill also requires, at the expense of the acquiring agency, a
8 review and analysis of the proposed development or creation of
9 a lake by a certified hydrologist upon receipt by the acquiring
10 agency of a petition signed by not less than 25 percent of
11 the affected property owners. The certified hydrologist is
12 selected by a committee comprised of all affected property
13 owners and a representative of the acquiring agency.

14 In addition to the analysis of surface drinking water
15 capacity and the determination of the number of acres justified
16 as necessary for a surface drinking water source by one
17 or more licensed professional engineers, the bill provides
18 that an additional independent review and analysis of such
19 determinations shall be conducted, at the expense of the
20 acquiring agency, by a licensed professional engineer upon
21 receipt by the acquiring agency of a petition signed by not
22 less than 25 percent of the affected property owners. The
23 licensed professional engineer is selected by a committee
24 comprised of all affected property owners and a representative
25 of the acquiring agency.

26 Division II of the bill takes effect upon enactment and
27 applies to projects or condemnation proceedings pending or
28 commenced on or after the effective date of division II of the
29 bill.

30 Current Code chapter 479B allows the Iowa utilities
31 board to grant permits for the construction of hazardous
32 liquid pipelines and grant eminent domain rights to pipeline
33 companies to construct such pipelines. Division III of the
34 bill establishes new Code section 479B.9A to require that
35 in addition to any other requirements for granting a permit

1 pursuant to Code chapter 479B, an application for a permit
2 involving the taking of property under eminent domain will not
3 be granted until the applicant obtains at least 75 percent
4 of the land area needed for the project through voluntary
5 easements. If 75 percent of the land area needed has not been
6 obtained through voluntary easements within two years of filing
7 the application, the board must reject the application.

8 Division III of the bill takes effect upon enactment and is
9 applicable to applications for permits filed but not yet acted
10 upon on the effective date of division III of the bill and to
11 applications for permits filed on or after the effective date
12 of division III of the bill.

13 Division IV of the bill relates to the acquisition of real
14 property by governmental entities by modifying criteria for
15 dispossessing owners of property and authorizing payments
16 to certain displaced persons operating a business or a farm
17 operation.

18 The bill amends Code section 6B.26 by adding business and
19 farm operation to the list of types of property from which
20 a landowner shall not be dispossessed under condemnation
21 proceedings until the damages for the property have been
22 finally determined and paid.

23 The bill provides that, in addition to payments otherwise
24 authorized by Code chapter 316, a displacing agency shall make
25 a payment to a person who is displaced from the person's place
26 of business or farm operation if the displaced person owned the
27 real property on which the business was conducted or where the
28 farm operation was located for at least one year prior to the
29 date of initiation of negotiations for the acquisition of the
30 real property and if the displaced person purchases comparable
31 replacement real property to conduct the displaced person's
32 business or farm operation within 18 months following the date
33 the displaced person vacates the real property or receives
34 payment from the displacing agency under another provision of
35 Code chapter 316, whichever is later. The bill establishes the

1 methodology for determining the amount of the payment based on
2 certain specified costs incurred by the displaced person in
3 acquiring comparable real property.

4 The bill also provides for payments to a displaced person or
5 a person who is displaced from the person's place of business
6 or farm operation as an indirect result of the acquisition
7 of real property by the displacing agency if the person in
8 whole or in part owns the business or farm operation, the
9 person leased the real property upon which the business was
10 conducted or where the farm operation was located for at least
11 one year prior to the date of initiation of negotiations for
12 the acquisition of the real property, and the person leases or
13 purchases comparable replacement real property to conduct the
14 displaced person's business or farm operation within 18 months
15 of the date the person vacates the real property or receives
16 payment from the displacing agency under another provision
17 of Code chapter 316, whichever is later. Under the bill,
18 the displacing agency determines whether such a displacement
19 from leased property has occurred pursuant to rules adopted by
20 the department of transportation. The bill establishes the
21 methodology for determining the amount of the payment based on
22 certain specified costs incurred by the person in acquiring or
23 leasing comparable real property.

24 Division IV takes effect upon enactment and applies to
25 projects or condemnation proceedings pending or commenced on or
26 after the effective date of division IV of the bill.

27 Current Code section 6A.22 defines public purpose, public
28 use, and public improvement for purposes of establishing the
29 authority of an acquiring agency to condemn private property.
30 Division V of the bill provides that public use, public
31 purpose, or public improvement does not include any use,
32 purpose, or improvement if, in lieu of condemning property,
33 a feasible alternative location for the use, purpose, or
34 improvement exists and the owners of the property comprising
35 the alternative location have offered such property for sale

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1 to the acquiring agency at the property's fair market value or
2 have consented to condemnation.

3 Division V of the bill takes effect upon enactment and
4 applies to projects or condemnation proceedings pending or
5 commenced on or after the effective date of division V of the
6 bill.